Supreme Court of the United States.

No. 204.—October Term, 1906.

Robert J. Tracy, Plaintiff in Error, *vs.* Albert A. Ginzberg, individually and as Trustee in Bankruptcy of H. C. Long & Company.	In error to the Supreme Judicial Court of the State of Massachusetts.

[March 18th 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This suit was instituted in the Supreme Judicial Court of Massachusetts by the plaintiff in error, a citizen of New York, against the defendant in error, a citizen of Massachusetts, individually and as trustee to H. C. Long & Company composed of H. C. Long and Frank A. Sanderson.

The case made by the bill of complaint is as follows: On the 23d of December 1902 the plaintiff sold to Long and Sanderson the personal property used in carrying on hotel business at a certain place in Boston, and assigned to them the lease of the realty occupied by the hotel. As partial payment therefor he took back a mortgage on the personal property for the sum of $7,500, running to the James Everard's Breweries, a corporation of New York. The mortgage covered not only a part of the purchase price, but also $3,000 in cash, which the plaintiff paid for the liquor license, which, on or about the above date, he procured to be assigned to Long and Sanderson and to himself, as joint owners, and also the sum of $1,400 in cash, which the plaintiff paid to the city of Boston as a fee for the liquor license issued by the board of police of that city to Long and Sanderson and to the plaintiff. That license expired by limitation on May 1st 1903.

In consideration of the advance, by plaintiff's procurement, of the above sums of $3,000 and $1,400, Long and Sanderson, on the above date, by writing, assigned their right, title and interest in said license to the plaintiff, covenanting and agreeing that all future applications for renewals of the license should be in the names of Long and Sanderson and the plaintiff, and that upon such renewal being granted they would assign, transfer and set over any such license.

Long and Sanderson being without money for the purpose, the plaintiff paid $1,400 to the city as the renewal fee, and thereupon a new first and

fourth class license was issued by the board of police to Long and Sanderson and the plaintiff to sell intoxicating liquors in the said hotel building. This license was taken by the plaintiff into his possession, and he had it in his possession at the bringing of this suit.

On the payment of the license fee for 1903–4 Long and Sanderson, by an instrument of writing dated April 24th 1903, assigned, transferred and set over to the plaintiff their interest in that license, and further agreed to assign and set over to him their interest in any renewal of the license so long as they should be indebted to James Everard's Breweries. The plaintiff alleged that that assignment was for present and valuable consideration, and that by reason thereof he became the sole owner of the license.

Lord and Sanderson were adjudged bankrupts on the 23d of July 1903, being at the time indebted, and are still indebted, to James Everard's Breweries in a sum exceeding $7,000.

The number of first and fourth class licenses in Boston is limited by law and are substantially all issued each year, so that a new license cannot be issued until an old license is cancelled. Old licenses are of great value to persons who desire to engage in the liquor business in Boston. They sell from $3,000 to $5,000 to persons who present them for cancellation together with an application for a new license to themselves.

Because of the large surrender value of old licenses and of the long-continued custom of reissuing licenses to old holders until refused for cause, such licenses have been recognized by courts of Massachusetts as property rights, and the powers of the board of police in dealing with them have been limited to the exercise of the sound discretion within the limits established by the laws of the Commonwealth.

The defendant Ginzberg, having full knowledge of the above facts, procured the board of police, on or about the 1st of April 1904, to cancel the plaintiff's license. This was done without notice to plaintiff or hearing on any charge of the violation of the terms of the license. With the assistance of the police board, prior to the cancellation of the license, Ginzberg sold the license for $3,000, which he refused to pay over to the plaintiff. He also collected from the city the sum of $200 as a rebate upon the plaintiff's license, and refused to account for any sum to the plaintiff whatever. In the matter complained of Ginzberg acted beyond his powers as trustee of the bankrupt estate and without warrant of law disposed of [to one O'Hearn] a valuable privilege belonging to the plaintiff, and has procured the destruction and cancellation of the plaintiff's valuable rights.

The relief prayed was that the title of the plaintiff to the first and fourth class liquor license issued to Long and Sanderson and himself be established; that Ginzberg be ordered to account for the sums received by him as the proceeds of the plaintiff's license and be required to pay the

same over to plaintiff; that the plaintiff's losses and damages by reason of the acts of defendant be established, and that he be ordered to pay the same; that execution issue against Ginzberg, individually, for such sums as may be found due to the plaintiff by reason of his wrongful interference with plaintiff's property; that if upon hearing it should appear that defendant acted within his duties as trustee of the bankrupt estate, that the decree run against him as such trustee but without execution thereon; and that the plaintiff have such other and further relief as may be just.

Such is the case made by the bill. After answer and replication the evidence was taken by a special commissioner, to be reported to the full court. In its finding of facts the court said: "In the case at bar, the police commissioners were satisfied that the name of Tracy was inserted in the two licenses to secure to his principal the debt, or part of the debt, due from the defendants Long & Sanderson; that he was not a partner in the liquor business, and for that reason the police commissioners gave a preference to O'Hearn, who was nominated by the trustee in bankruptcy, with[out] the consent, or against the objections, of Tracy, in deciding to whom a license should be issued on the vacancy caused by Long & Sanderson going out of business. The trustee received three thousand dollars for the nomination by him, and I find that it is, in fact, the value of such a nomination. It follows that the three thousand dollars received by the defendant was received for something which he had, and not for anything which the plaintiff had, and the defendant is entitled to have the bill dismissed with costs." By the final decree the bill was dismissed and the case carried before the full court, which affirmed the decree of the trial court.

The Supreme Judicial Court of Massachusetts affirmed the judgment, holding that to sell intoxicating liquor was a personal privilege, valuable as property, in a certain sense, for the personal use of the holder but not assignable or transferable by him in any way; and that "the value of the release is recognized as depending wholly upon the practice of the police commissioners, and because there is no legal right to assign the privileges of such a license, and the police commissioners refuse to be bound by assignments, or to recognize at all assignments for security, the court holds that a holder of an assignment for security has no rights under the assignment." Further: "In the present case the release or assignment of the licenses by the bankrupts to one who wishes to obtain licenses for the next year, induced him to pay the trustee in bankruptcy three thousand dollars. The money so received was not for any property owned by the plaintiff. It was for a position before the police commissions, from which the payor had reasonable ground to expect their favorable action. The plaintiff could not control this

position, or do anything that would induce the payment by O'Hearn of the money which the defendant received. Upon the facts shown, the board of police commissioners did not consider the insertion of the plaintiff's name in the original license as affecting their right to issue new licenses. It is plain that they were right as regards the licenses for the ensuing year. Whether they were right or not in regard to the plaintiff's relation to the old licenses is immaterial, for it is plain that the money received by the defendant was not paid on account of the plaintiff's interest, but on account of what the defendant did in enabling O'Hearn to obtain the new licenses." *Tracy* v. *Ginzberg*, 189 *Mass.* 260.

The plaintiff insists that the action of the police commissioners deprived him of property without due process of law. The answer to this contention is that the expectation called a right or property was of the board's creation and therefore subject to the limitations which the board imposed.

The plaintiff also insists that by the judgment of the Supreme Judicial Court of Massachusetts he has been deprived of his property without the due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States. This proposition is without merit. Within the meaning of that Amendment, the court, by its judgment, did not deprive the plaintiff of property without due process of law. He sought a decree adjudging that he was entitled to the money received by Ginzberg from O'Hearn. The court, proceeding entirely upon principles of general and local law, and giving all parties interested in the question an opportunity to be heard, decided that plaintiff had no right to that money. The decision of a State court, involving nothing more than the ownership of property, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property without due process of law, simply because its effect is to deny his claim to own such property. If we were of opinion, upon this record, that the money received by Ginzberg from O'Hearn really belonged to Tracy—upon which question we express no opinion—still it could not be affirmed that the latter had, within the meaning of the Constitution, and by reason of the judgment below, been deprived of his property without due process of law. Under the opposite view every judgment of a State court, involving merely the ownership of property, could be brought here for review—a result not to be thought of. The Fourteenth Amendment did not impair the authority of the States, by their judicial tribunals, and according to its settled usages and established modes of procedure, to determine finally, for the parties before it, controverted questions as to the ownership of property, which did not involve any right secured by the Federal Constitution, or by any valid act

of Congress, or by any treaty. Within the meaning of that Amendment, a deprivation of property without due process of law occurs when it results from the arbitrary exercise of power, inconsistent with "those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." *Bank of Columbia* v. *Okely*, 4 *Wheat.* 235, 244; *Murray's Lessee* v. *Hoboken &c.*, 18 *How.* 272. It cannot be said that the State court in this case, by its final judgment, departed from those usages or modes of proceeding.

The judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.